

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>11-C-17775; 11-C-18004</b>
	)	<b>(Cons.)-DFM</b>
<b>TERENCE JOSEPH GALLAGHER,</b>	)	
	)	<b>DECISION AND DISCIPLINE ORDER;</b>
<b>Member No. 192341,</b>	)	<b>ORDER SEALING CERTAIN</b>
	)	<b>DOCUMENTS</b>
A Member of the State Bar.	)	

---

**Introduction**

In this consolidated conviction referral proceeding, Respondent Terence Joseph Gallagher (Respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that Respondent has successfully completed the ADP, the court will order that Respondent be publicly reprovved with conditions for two years.

**Significant Procedural History**

After the transmittal to the State Bar Court on December 1, 2011, of the records<sup>1</sup> of Respondent's April 1, 2010 conviction for violating Vehicle Code section 23152, subdivisions (a) [driving a vehicle under the influence of alcohol with a prior] and (b) [driving a vehicle with a blood-alcohol level of .08% or more with priors], misdemeanors which may or may not involve

---

<sup>1</sup> These records included notice of the finality of the conviction.

moral turpitude, the Review Department of the State Bar Court issued an order on December 27, 2011, in case No. 11-C-18004, referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding the violations of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

The Notice of Hearing on Conviction (NOH) in case No. 11-C-18004 was filed on January 10, 2012. The matter was originally assigned to the Honorable Richard A. Platel. Respondent filed his response to the NOH on January 30, 2012.

On February 23, 2012, Judge Platel filed a status conference order referring case No. 11-C-18004 to the court's ADP before the undersigned judge.

Respondent initially contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his alcohol abuse problem on March 2, 2012.

After the transmittal to the State Bar Court on April 4, 2012, of the records<sup>2</sup> of Respondent's January 19, 2012 conviction for violating Vehicle Code section 23152, subdivision (b) [driving a vehicle with a blood-alcohol level of .08% or more with a prior], a misdemeanor which may or may not involve moral turpitude, the Review Department of the State Bar Court issued an order on April 26, 2012, in case No. 11-C-17775, referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding the violation of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

On April 26, 2012, Respondent submitted to the court his declaration which established a nexus between his substance abuse issue and his misconduct in these matters.

///

---

<sup>2</sup> These records included notice of the finality of the conviction.

The Notice of Hearing on Conviction (NOH) in case No. 11-C-17775 was filed on May 1, 2012. The matter was assigned to the undersigned judge. Case Nos. 11-C-18004 and 11-C-17775 were consolidated, and the matter was reassigned to the undersigned for all further proceedings. Respondent filed his response to the NOH on May 15, 2012.

On September 28, 2012, Respondent entered into a long-term Participation Plan with the LAP.

The court executed its Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) on October 15, 2012, setting forth the discipline the court would recommend if Respondent successfully completed the ADP and the discipline the court would recommend if Respondent was terminated from, or failed to successfully complete, the ADP. Thereafter, on October 15, 2012, Respondent and his attorney executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and Respondent was accepted into the ADP.<sup>3</sup>

On October 17, 2012, the parties' Stipulation Re Facts and Conclusions of Law (Stipulation) was filed.

On April 30, 2014, after receiving a certificate from the LAP dated April 8, 2014, setting forth that the LAP is not aware of the use of any unauthorized substances by Respondent for at least one year prior to April 8, 2014, the court filed an order finding that Respondent has successfully completed the ADP. This matter was submitted for decision on April 30, 2014.

### **Findings of Fact and Conclusions of Law**

#### **Culpability Findings**

The parties' Stipulation filed on October 17, 2012, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth

---

<sup>3</sup> The Confidential Statement and Contract were lodged on October 17, 2012.

herein. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

**Case No. 11-C-18004–Driving Under the Influence of Alcohol with a Prior**

In this conviction referral matter, Respondent entered a plea of no contest and was convicted of a violation of Vehicle Code section 23152, subdivisions (a) [driving a vehicle under the influence of alcohol with a prior] and (b) [driving with a blood-alcohol level of .08% or more], both misdemeanors.

On December 19, 2009, at approximately midnight, a police officer observed Respondent’s vehicle several feet past the limit line at an intersection. A witness had observed Respondent unconscious at the steering wheel of his vehicle and called police. The police officer attempted to communicate with Respondent by knocking several times on the window on the driver’s side and shining his flashlight on Respondent. Respondent ultimately woke up and unlocked and opened his door. When he was asked to exit his vehicle, Respondent staggered and fell on the ground, telling the officer to ““leave [him] alone.””<sup>4</sup> Respondent admitted to the officer that “he had ‘three beers and an Ambien sleeping pill.’”<sup>5</sup> Several field sobriety tests were performed on Respondent. Thereafter, Respondent refused to perform other tests or answer other questions and he was subsequently arrested. Respondent had a blood-alcohol level of .17%.<sup>6</sup> Respondent stipulated that the facts and circumstances surrounding his convictions do not involve moral turpitude but do constitute other misconduct warranting discipline.

///

---

<sup>4</sup> See the parties’ Stipulation, p. 6, numbered paragraph 7.

<sup>5</sup> See the parties’ Stipulation, p. 6, numbered paragraph 8.

<sup>6</sup> Respondent had earlier been convicted on December 31, 2008, of violating Vehicle Code section 23152, subdivisions (a) [driving a vehicle under the influence of alcohol] and (b) [driving a vehicle with a blood-alcohol level of .08% or more], misdemeanors, as a result of an arrest on October 11, 2008.

**Case No. 11-C-17775–Driving with Blood-Alcohol Level of .08% or More with Prior**

In this conviction referral matter, Respondent entered a plea of no contest and was convicted of a violation of Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol level of .08% or more], a misdemeanor.

On July 1, 2011, at approximately 1:00 a.m., a California Highway Patrol officer observed Respondent's vehicle driving on a street without its headlights activated. Respondent turned in front of the officer's vehicle and activated his headlights before he drove onto the freeway. The officer stopped Respondent's vehicle and smelled alcohol coming from the vehicle. When the officer checked the status of Respondent's license, it showed that Respondent's license was suspended for driving under the influence. A breath test showed that Respondent had a .09% blood-alcohol level which was a violation of Respondent's prior criminal probation. Respondent stipulated that the facts and circumstances surrounding his conviction do not involve moral turpitude but do constitute other misconduct warranting discipline.

**Aggravation**

**Indifference (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Std. 1.2(b)(v).)<sup>7</sup>**

Respondent demonstrated indifference toward atonement for or rectification of the consequences of his misconduct.

**Multiple/Pattern of Misconduct (Std. 1.2(b)(ii).)**

Respondent's misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

///

---

<sup>7</sup> All further references to standard(s) or std.(s) are to this source. The standards were revised effective January 1, 2014. However, as the former standards were in effect at the time the parties' entered into the Stipulation and at the time Respondent entered the ADP, the court will apply the former standards in this matter.

## **Mitigation**

### **No Prior Discipline (Std. 1.2(e)(i).)**

Respondent was admitted to the State Bar of California in 1997 and has no prior record of discipline.

### **Candor/Cooperation (Std. 1.2(e)(v).)**

Respondent cooperated with the State Bar by entering into a stipulated resolution of these matters without the need for a trial.

### **Other**

In accordance with Supreme Court case law, an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant mitigating weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.) Respondent's abuse was clearly addictive in nature; causally contributed to his misconduct; and Respondent has successfully participated in the LAP and has successfully completed ADP. It is therefore also appropriate to consider Respondent's successful completion of the ADP as a further mitigating circumstance.

## **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if Respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the

ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 3.4, and 2.6(a) and *In re Kelley* (1990) 52 Cal.3d 487, *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, *In re Carr* (1988) 46 Cal.3d 1089, *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260, and *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108.

Because Respondent has now successfully completed the ADP, this court, in turn, now orders the imposition of the lower level of discipline, set forth more fully below.

### **Discipline Order**

Accordingly, it is ordered that Respondent **Terence Joseph Gallagher, State Bar No. 192341**, is hereby publicly reprovved. Pursuant to the provisions of rule 5.127 of the Rules of Procedure of the State Bar (Rules of Procedure), the public reprovval will be effective when this decision becomes final. Furthermore, pursuant to California Rules of Court, rule 9.19(a) and rule 5.128 of the Rules of Procedure, the court finds that the interest of Respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovval imposed in this matter. Failure to comply with any condition(s) attached to this public reprovval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is hereby ordered to comply with the following conditions attached to his public reprovval for two years following the effective date of the public reprovval.

1. During the reprovval period, Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California.

2. Within 10 days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California

(Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

3. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of reprobation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of reprobation, Respondent must promptly meet with the probation deputy as directed and upon request.

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of reprobation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of reprobation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of reprobation and no later than the last day of the reprobation period.

5. Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the reprobation conditions.



6. Respondent must comply with all conditions of probation imposed in the underlying criminal matters and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

7. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Plan/Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of Respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.<sup>8</sup>

### **Multistate Professional Responsibility Examination**

It is not ordered that Respondent provide proof of passage of the Multistate Professional Responsibility Examination (MPRE), as Respondent passed the MPRE administered on August 17, 2013.

### **Costs**

Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and such costs are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

///

---

<sup>8</sup> The court will not order Respondent to provide proof of attendance at State Bar Ethics School and passage of the test given at the end of that session, as Respondent successfully completed Ethics School on May 1, 2014.

### **Direction Re Decision and Order Sealing Certain Documents**

The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) of the Rules of Procedure, all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: August \_\_\_\_, 2014

---

DONALD F. MILES  
Judge of the State Bar Court